

Planning Board – Town of Spencer

Minutes

Regular Planning Board Meeting
Tuesday, May 17, 2011 at 7:00 PM
McCourt Social Hall
Memorial Town Hall



The meeting was called to order at 7:10 p.m.

Planning Board Members Present: Chairman Fabio Carrera, Shirley Shiver, Paul Sauvageau, Robert Ceppi, and Mary Stolarczyk.

Planning Board Member Absent: None.

Staff present: Michelle Buck, Town Planner, and Bea Meechan, Senior Clerk, ODIS.

New Business:

A. ANR - The Estate of Kenneth Sandstrom, Donnelly Road, creation of 5 new lots. The entire property at one time consisted of approximately 48 acres; it was subdivided into 2 lots (Lot 1 and Lot 2) previously. As result, Lot 1, which has an existing house, contains 11 acres; and Lot 2 has approximately 37 acres.

The applicant now submitted a new ANR plan; the purpose is to subdivide the existing Lot 2 into 5 new lots. Ms. Buck reviewed the original plan submitted and found the plan needed additional information as stated in the ANR Plan Requirements (existing and proposed boundaries shall be shown with lines of different thickness or type, and a classification and location of Zoning District Boundaries). She notified the applicant and requested a revised ANR plan which was presented to the Board tonight.

Ms. Ginny Scarlet, Wetland/Soil Specialist, sent a memo to the Board and the applicant suggesting to move the lot line between Lot 3 and Lot 4 further into Lot 3. This would give more room that is not wetlands on lot 4 for access to the dry land at the back of the lot. However this is just a suggestion in good faith and not a requirement; the Planning Board has to sign the ANR plan. The Board concurred with Ms. Scarlet.

Note: The Engineer, who prepared the revised ANR Plan, used black solid lines in bordering the boundary line for the existing Lot 2; a thicker, heavier black solid line was used in bordering the boundary lines for the proposed 5 lots. (However, Board members felt the heavier line was not sufficiently different from the regular solid black lines.)

The Board members reviewed the plan at this time and agreed the plan needs further revision. The following were comments and suggestions from the Board:

- The plan does not clearly distinguish the existing line from the proposed boundaries lines – shall use different line types and styles. Board members did not feel the thicker lines were thick enough.
- The existing Lot 1 is not required to be included with this plan. Option: If including Lot 1, the plan shall specify the setback distance of the existing structure, or, omit Lot entirely from the plan.
- The proposed lots (5 lots) shall be explicitly identified as Lot 2R, Lot 3, Lot 4, Lot 5 and Lot 6 and be added onto the notation “The purpose of the plan is to subdivide existing Lot 2 into 5 Lots.”

Note: There was no representative from the applicant present tonight.

Ms. Shiver made a motion to accept the ANR plan when the above three (3) revisions are met, and to have Ms. Buck endorse the plan. Mr. Sauvageau seconded the motion and the vote was 4-0 in favor.

B. ANR Plan – Arthur & Paula King, Northwest Road, creation of 2 new lots. The purpose of the plan is to create Parcel D (contains 8,819± square feet), and Parcel E (contains 4,086± square feet) to be conveyed (from Mr. James Devereux) and combined with Mr. King’s existing lot. Ms. Buck reviewed the original plan submitted and notified Mr. Thomas Fancy, the Engineer who prepared the plan, of the additional requirements needed to be included on the plan (square foot coverage of existing structures, and the zoning classification and location of any Zoning District Boundaries). The revision ANR plan was submitted to ODIS and for a review from the Board tonight.

The Board members reviewed the plan at this time and found that it had met all submittal requirements. However, Ms. Shiver thought that the plan needed clarification in regards to the small frontage area located next to the south end corner of Mr. Devereux’s property. [The front lot line had been discontinued at the south end corner of Mr. Devereux’s property]. The subject area in question had appeared to be part of the abutting property, owned by Mr. Ralph wood, as shown on the plan - it is misleading.

Mr. King explained that it used to be an old road right around that area, and he believed when the Town constructed the road (North Spencer Road – Route 31) the result was this small area had became part of the right-of-way. Mr. Wood does not own that.

Ms. Shiver said that the drawing of the line requires more clarification: The frontage line shall extend from the discontinued point and further onto Mr. Wood’s property. All members agreed.

Ms. Buck asked whether the overlay district, Aquifer Protection District, is required on the ANR plan in addition to the zoning districts specify in the ANR Plan Requirements.

The Board members said no, just the basic zoning districts.

Ms. Shiver made a motion to accept the ANR plan with the plan showing the frontage line of Mr. Devereux’s property extending from the south corner and continues onto Mr. Wood’s property,

and to have Ms. Buck endorse the plan. Mr. Sauvageau seconded the motion and the vote was 4-0 in favor.

Note: Mr. King and Mr. Fancy, the Surveyor who prepared the ANR plan, came back about 45 minutes later. Mr. Fancy made a modification on the plan to the Board's satisfaction. Ms. Shiver made a motion to accept the ANR plan as submitted and to have Ms. Buck endorse the plan tonight. Mr. Sauvageau seconded the motion and the vote was 4-0 in favor.

C. Potential Modification of Deer Run Subdivision, Funari Site Development, Inc. Ms. Buck gave a brief summary of the current status:

- The Board found the developer, Michael Harrington, MHD Development, in default of performance obligations on both Phases (I & II).
- The Town collected the funds of both Phases, which is in a form of Letter of Credit issued by Framingham Co-operative Bank; the funds collected are insufficient to cover the current cost to complete the work.
- Spencer Utilities & Facilities (U&F) is managing work for Phase I, and when it has completed Phase II then can start. The Town has not yet put out invitations for public bidding.

Ms. Buck said the representatives from Funari Site Development, Inc. contacted the Town, inquiring on the possibility of a private company being involved in the finishing work which they are here tonight to discuss with the Board.

Mr. Steve O'Connell from Andrews Engineering stated that he and his associates, Funari Site Development, Inc., have a long relationship with Framingham Co-operative Bank, and has received an offer to purchase the mortgage on the property from the Bank.

In referencing the approved Subdivision Plan, Mr. O'Connell said it is impossible and not feasible to construct the roadway (Hummingbird Avenue) from the dead-end cul-de-sac at the Spencer town line, and continuing into North Brookfield. This particular roadway runs through Lots 16 and 17 (the two lots are located at the opposite direction with one another). By looking at the facts presented, the length of the roadway does not justify the two lots. If the road were ended (instead of connecting to North Brookfield), it would exceed the length requirements for dead end streets in the Subdivision Regulations.

The Town received \$190,000 from the Bank for Phase II's roadway construction (for work done up to station 10+00). Mr. O'Connell believed that an additional amount of \$50,000 would be needed to complete the construction. Mr. O'Connell said he may or may not participate in the public bidding process. He understood that the Town just could not outright retain him to complete the work.

Ms. Shiver asked what Mr. O'Conner's intention was in regards to the subdivision.

Mr. O'Connell and his associates have repaired subdivisions that are in trouble for the past three years. He would like to work with the Board to achieve the completion of the entire subdivision.

When the Town awarded the bid to the selected construction company, Mr. O'Connell proposed the following: **Proposal**

- Proposed doing non-essential infrastructure works specified on the itemized listing up to station 10+00 and willing to pay for the different amount between the bid's amount submitted and the \$190,000; the awarded firm shall do the major works required such as paving the roadway.
- Finishing the remaining work from station 10+00 to 13+00 as well (as shown on the Conceptual Modified Subdivision Plan).

Mr. O'Connell presented the Conceptual Modified Subdivision Plan, prepared by Andrew Survey & Engineering, Inc (dated 5/16/2011) with the following explanation:

- Proposed keeping the subdivision within the Spencer line, eliminating roadway construction into North Brookfield.
- Proposed a dead end cul-de-sac toward the West side of the property. The length of the cul-de-sac will be 2,000 feet; from station 10+00 to 13+00 as shown on the plan.
- Re-designed the lots and incorporated them into 9 lots in total.

Note: There still is a large amount of land left on the West side of the property (proposed plan) as opposed to the original Approved Subdivision Plan.

In conjunction with the above ***Proposal*** Mr. O'Connell said the remaining lots that are not within the subdivision's project will be donated as Open Space to the Town. With the modification of the plan, Mr. O'Connell is requesting a waiver over 1,000 feet from station 10+00 to 13+00 (length of the cul-de-sac) and the emergency access road.

Mr. Sauvageau asked if the waiver is for 1,000 feet cul-de-sac length from station 10+00 to 13+00, and also without an emergency access.

Mr. O'Connell concurred.

Board members' comments: Mr. Carrera commented that the negative side to the Board on this proposed plan is to grant the waiver (breaking its own rule/restriction). However, the completion of the road way meaning that the community would be happier, and that is considered a positive outcome for the Town, said Mr. Sauvageau.

The Board said the length of the cul-de-sac requires a maximum of 2,000 feet with an emergency access. The Board reviewed the Subdivision Regulations under Street Design 3.5.B which states as follows:

Dead end Streets: In conventional single family subdivisions in Rural Residential district, the maximum length of a dead end street (measured to the far edge of the right-of-way) is 2,000 feet for any minor street providing access to a maximum of 15 lots, however an emergency access area must be provided which will be owned and maintained (including

snow removal) by a Homeowners Association and the emergency access is reviewed, approved and inspected annually by the Spencer Fire Department for both design and construction.

The Board members looked at the plan and commented that the proposed dead end cul-de-sac shall measure from the right-of-way, either from Kittredge Road or North West Road, and the mark station 0+00 starts from there, not at station 0+00 from Phase I. Due to the public safety concern from The Fire Chief, the emergency access road is essential and necessary. There is still large amount of land left on the West side, regardless of a donation to the Open Space, the access road shall be constructed to the Fire Chief's satisfaction.

The Board members asked Ms. Buck about the estimated cost and what was U&F's opinion on the cost for Phase II, and the status of the Fire Cistern.

Ms. Buck said that based on the estimation from Quinn Engineering in June of 2009, it is \$240,000 for Phase 2A for work done up to station 10+00. U&F will send out invitation for bid and also confirmed that the amount of \$190,000 is insufficient. The remaining work for the rest of Phase II is estimated for \$326,000.

Mr. O'Connell said the Fire Cistern is damaged and needs repair.

Note: The original proposed plan was to construct subdivisions in both towns; Spencer and North Brookfield, and having a connection road (between the Towns' lines) serving as an access road for the end portion of Subdivision in Spencer.

Mr. Ceppi asked for any possibility of constructing an emergency access road into North Brookfield with cooperation from Spencer, North Brookfield, and Mr. O'Connell.

Mr. O'Connell replied North Brookfield's Planning Board had rescinded the Subdivision. The length of the access road connects the two towns is approximately 1,200 feet. The construction cost (asphalt material for grading/paving and labor) will be very costly. In addition, he is also concerned with the long term maintenance cost.

Mr. Sauvageau asked about the slope of the area - if the area is flat, the gravel access road could be doable in lieu of asphalt. However, this subject matter shall be discussed with the Fire Chief.

Mr. O'Connell said the slope is flat. He will contact the Fire Chief.

Ms. Buck inquired on the anticipated time line assuming that things are progressing forward.

Under the assumption that Mr. O'Connell purchases the mortgage, the foreclosure process may take 6 – 8 months, and when such legality (transferring of ownership) is completed, he will move forward with the proposed plan. He is confident no one will bid on the mortgage except himself - due to it is being a very large mortgage. The completion cost for the road construction is more than what town has collected (\$190,000). Mr. O'Connell explained when the town has

exhausted all the funds and is still short on finishing; he then will pick up the rest and complete the road work up to station 10+00.

With the above comment, Ms. Buck asked if Mr. O'Connell wanted the town to hold off the bidding until the completion of the ownership, from the Bank to Mr. O'Connell, has taken place.

Mr. O'Connell said he has no such desire (to hold off the bidding) and explained when the bid comes in (with the estimated X dollars amount for the work), the awarded contractor firm shall do the essential work that specifies on the itemized listing for the amount equal to \$190,000 the Town has collected. He will select items that are considered as infrastructure and repairing work required, and perform those tasks at his own expense for the amount equal to the difference between the bid's amount submitted and the \$190,000, the Town is holding.

Note: Mr. O'Connell is familiar with the subdivision; he coordinated the road's construction, infrastructure with the Bank prior to the project being declared in default. He believed that things would progress in a more timely fashion if he and the awarded contractor firm work together.

The asphalt grading season will end in November. The Board commented the proposed plan could start at the earliest next spring of 2012 providing that everything is moving forward as expected. Mr. Ceppi suggested sending the bid out; do not wait. The Board shall take the concerns of residents currently residing in the subdivision under consideration. [There were several complaints in regards to the road's condition and other issues in the past from the residents].

Mr. Michael Kubasiak of 1 Bellflower Lane said that the Town only plows the road up to Lot 7; he felt that this section of the town has been left out, no one seems to care or is concerned. He has recently learned of Mr. O'Connell's proposed plan which he is interested in. Mr. Kubasiak is here tonight to obtain more information and the Board's opinions.

In practice, the Superintendant U&F would handle the bidding process, and with the departure of Mr. McNeil and the Town is in the process of finding the best qualified replacement, thus the bidding has stalled. The Board directed Ms. Buck to ask the Town Administrator about other options to execute and manage the public bidding process. Ms. Buck said she would and will report back to the Board.

Mr. O'Connell suggested the Board could ask Town Counsel to consider a reversal on the default of the Definitive Subdivision Approval and the surety would be returned back to the Bank. Mr. O'Connell could start the work immediately [since he already is familiar with the subdivision as stated earlier, and in addition the Bank offered him to purchase the mortgage on the subdivision]. This way the road would be ready for the road acceptance at the Fall Town Meeting of this year.

Ms. Buck suggested Mr. O'Connell seek an opinion from the Bank's attorney on the subject matter instead of having the Board or herself contacting the Town Counsel (since there is no obvious benefit to the Town to return the funds). The Board will look into moving forward with the bidding process. Most importantly **the Board advised Mr. O'Connell to have a discussion**

with the Fire Chief in regards to the emergency access road, and come back to the Board at the next Planning Board's meeting in June. The next steps are contacting Ms. Buck of the modification of the plan and the submission of the application to ODIS.

Mr. Kubasiak asked who is responsible for the road in the subdivision at the present time.

The Board said it is the previous owner's responsibility since the road has not yet been accepted as a public right-a-way by the Town. Mr. O'Connell explained the Bank has not foreclosed on the property yet, thus the liability still rests with the previous developer.

Mr. O'Connell asked the status on the Certificate of Decision on the Subdivision Plan.

The Board had granted amendments to Certificate of Decision on Definitive Subdivision Plan, the extension time to complete the construction for both Phase I & II previously. With the Extension Permit Act, the Board asked when the extension period is due to expire.

Ms. Buck said one Phase will expire this year. She will check the expiration dates of both Phases and report back to the Board.

Mr. O'Connell thanked the Board and Ms. Buck for their time.

Old Business:

A. Draft Stormwater Regulations. Ms. Buck said the draft is close to completion. Ms. Buck, Ms. Scarlet, and Mr. Butler will meet this Thursday (5.19.11) to finalize the requirements of a site plan for a minor project; the idea is to limit the requirements (e.g. landscaping and driveway plans) as opposed to the site plan for the major project. Ms. Buck asked whether the Board would like to review the final draft before scheduling the public hearing date, or to review and revise if necessary, as part of the hearing process.

The Board members said to schedule the date for a public hearing, and any modifications can be made at the hearing.

Town Planner Report:

A. Division of Conservation Services (DCS) – The LAND (Local Acquisitions for Natural Diversity) Program. Ms. Buck informed the Board of the DCR LAND Program Grant, formerly called the Self-Help Program. The Town is considering pursuing the grant. The grant program may be used only for the acquisition of land for conservation and recreation purposes. The application consists of extensive documentation and requires the Town to submit or have on file an approved open space plan. The deadline for the application is in July, 2011. Ms. Buck said she will be working to complete the draft open space plan as soon as possible.

Mr. Sauvageau asked whether the DCS would acquire the ownership of the property.

Ms. Buck explained the DCS will contribute funds and assist municipalities in acquiring the land. The land will be perpetuity protected.

Ms. Shiver asked if the Planning Board should make a recommendation in retaining a consulting firm to assist with the application and writing a grant.

Ms. Buck said that the potential grant will have partners that will provide such assistance.

B. Inclusionary Housing Bylaw – Update. Ms. Buck is still continuing do research on the formulation of the fees-in-lieu of the affordable units required. She commented that it is a challenge because she hasn't found another community that has a simple, easy-to-understand model. She forwarded a request for assistance on the subject matter to the CMRPC, and is hoping to receive some ideas and suggestions back.

The Planning Board members did participate in the meetings at the CMRPC for the Technical Assistance and Planning; the Town in turn is eligible for a number of hours for assistance and consultant services. Ms. Shiver commented that she has attended the meetings at CMRPC regularly, and this is such an appropriate time to seek help from CMRPC.

Approval of Minutes: Minutes for April 19, 2011.

Mr. Sauvageau made a motion to accept the minutes for April 19, 2011. Ms. Shiver seconded the motion and the vote was 3-0 with Mr. Carrera abstaining.

Other Business:

A. Resignation of the Chairman – Mr. Carrera. Mr. Carrera announced his resignation as the Planning Board Chairman. With this departure, there are 3 members left on Board, Mr. Carrera said that he is glad to be an alternate member when needed if this is acceptable for all members.

Ms. Shiver made a motion to nominate Mr. Carrera as the alternate Planning Board member. Mr. Sauvageau seconded the motion and the vote was 3-0 in favor.

B. Election of the Officers. Mr. Sauvageau made a motion to nominate Ms. Shiver to be the Chairman, Planning Board. Mr. Carrera seconded the motion and the vote was 3-0 in favor. Ms. Shiver made a motion to nominate Mr. Sauvageau as a Vice Chairman. Mr. Ceppi seconded the motion and the vote was 3-0 in favor.

With no further discussion, Mr. Ceppi made a motion to adjourn the meeting at 8:10 p.m. Mr. Sauvageau seconded the motion and the vote was 4-0 in favor.

Submitted By:

Approved By:

Bea Meechan, Senior Clerk

Shirley Shiver, Planning Chairman

List of Documents used on May 17, 2011

- ANR Plan, Donnelly Road, Estate of Kenneth Sandstrom.
- ANR Plan, Northwest Road, Arthur & Paula King, applicants.
- Conceptual Modified Subdivision Plan – Deer Run, prepared by Andrews Survey & Engineering, Inc for Funari Site Development dated 5.16.11.
- Spencer Subdivision Regulations, Section 3.5.B.